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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,445	10/30/2003	Eric T. Shuler	LEAP-P0191	2847
41066	7590	09/22/2006	EXAMINER	
WAGNER, MURABITO & HAO, LLP TWO NORTH MARKET STREET, THIRD FLOOR SAN JOSE, CA 95113			SUHOL, DMITRY	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,445

Applicant(s)

SHULER ET AL.

Examiner

Dmitry Suhol

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 17-27, 29-47, 61, 62 and 64-70 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9, 17-27, 29-47, 61, 62 and 64-70 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heit '503 in view of Wood '980 and Pridgen '175. Heit discloses an interactive educational toy apparatus containing most of the claimed elements including, 3-D indicium containing structures (20), a base unit (28) having a housing (figure 2), a receiving region (top region of base unit 28, figure 2), a processor unit in the housing (col. 4, lines 1-6), a speaker coupled to the processor unit (speaker 26), a reader coupled to the processor unit (reader 47), a back structure where the reader is capable of identifying the indicium containing structure (col. 5, lines 4-9 where lacking any claimed distinguishing features the back surface including member 36 is considered to be a back structure). Limitations of claims 4-6, 24-26 are described in col. 3, lines 12-22. A window, as required by claim 7, is described in col. 8, lines 1-9. A memory unit, as required by claims 17, 37 and 61, is shown as data storage unit 23 and further described in col. 9, lines 30-45. Limitations of claims 18-20, 32-35, 38-43, 46-47, 64-67, 69 are shown in figure 2 and described in col. 3, lines 1-11 and col. 9, lines 30+. Limitations of claim 45, are encompassed in col. 9, lines 42-45 where a floppy disk is

considered to be the removable cartridge. A code readable by the reader, as required by claims 62, is described in col. 5, lines 4-45.

Heit lacks the teaching of a first and second attachment element as required by claims 1, 17, 21, 37 and 61, where the attachment elements are magnets as required by claims 2, 17, 22, 44. Heit further lacks the explicit teaching of use of phonetic pronunciations as required by claim 20, 35, 40, and 70. However, Wood '980 discloses a device like that of Heit which teaches that it is known to provide an indicium containing structure which uses magnets to attach the structure to the base unit (col. 3-4, lines 67 and 1, respectively) where the device produces a plurality of auditory information in response to the elements placed on a base including phonetic sounds/pronunciations (cols. 1-2, lines 66+ and lines 1-9). Therefore it would have been obvious to one having ordinary skill in the art to include a first attachment element with the indicium structure of Heit for the purpose of holding the indicium structure (20) on the base unit (28). It would have been further obvious to include phonetic pronunciations/sounds associated with the elements of Heit in his device for the purpose of establishing a relationship between the symbols of letters, numbers or other indicia on the elements (20) to the sounds and names associated with the symbols to promote education through fun.

Pridgen is relied upon to teach that the use of magnetic attachment elements to support a language teaching unit on a vertical surface (col. 2, lines 1-5 and 41-44) in order to teach language to a child user is known. Therefore it would have been obvious to utilize a magnet as an attachment element in the device of Heit for the purpose of

supporting the unit on a vertical surface in order to teach language to a child user and in order that the toy is not mishandled by users with limited dexterity.

Regarding the limitations of claim 68, Heit clearly teaches that his device may have a discreet number of locations for receiving the plurality of indicium structures (col. 8, lines 1-19) since such structure would greatly reduce the possibility of the reader and/or sensor detecting more than one particular block. Therefore providing two indicium receiving locations would certainly be obvious in the device of Heit.

Claims 1-9, 17-27, 29-47, 61-62, 64-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heit '503, Wood '980 and Pridgen '175, as stated above, and further in view of Lee et al '255. Heit, as modified by Prigen and Wood, discloses most of the claimed elements as stated above, and further including that the indicium back structure may cooperate with the work surface of base (28) through a variety of means (col. 5, lines 4-6 and 43-45). Lee discloses an interactive educational device, like that of Heit, which teaches that it is known to utilize a structural code on indicium containing structures (figure 4) in order to depress upwardly biased depressible switches (45) which are then read by reader chip (70) to identify the structure indicium. Therefore it would have been obvious to utilize the structural code and upwardly biased depressible switches in the device of Heit since Heit states that his indicium identification means may be of any know technologies (col. 5, lines 4-6 and 43-45).

Response to Arguments

Applicant's arguments filed 6/30/2006 have been fully considered but they are not persuasive. Applicants argue that Heit '503, Wood '980 and Pridgen '175 references all fail to teach a structural code for identifying the indicium containing structure, while the Lee reference fails to meet the prima facie case of obviousness for combining the reference and that the references actually teach away from the claimed invention. In response the examiner points out that Wood '980 is relied upon to teach that it is known to provide an indicium containing structure which uses magnets to attach the structure to the base unit (col. 3-4, lines 67 and 1, respectively) where the device produces a plurality of auditory information in response to the elements placed on a base including phonetic sounds/pronunciations (cols. 1-2, lines 66+ and lines 1-9) in a device like that of Heit. Therefore it would have been obvious to one having ordinary skill in the art to include a first attachment element with the indicium structure of Heit for the purpose of holding the indicium structure (20) on the base unit (28). Pridgen is relied upon to teach that the use of magnetic attachment elements to support a language teaching unit on a vertical surface (col. 2, lines 1-5 and 41-44) in order to teach language to a child user is known. While the device of Lee is relied to teach that it is known to utilize a structural code on indicium containing structures (figure 4) in order to depress upwardly biased depressible switches (45). Since the disclosure of Heit clearly states that his indicium identification means may be of any know technologies (col. 5, lines 4-6 and 43-45) it would have been obvious to one having ordinary skill in the art to incorporate the teachings of Lee in the device of Heit.

With respect to applicants arguments that Heit requires that a character identification signal is generated, the examiner points out that at col. 5, lines 4-6 that Heit teaches that the character and block identification information may be generated by any number of know technologies and then goes on to describe a preferred embodiment of his invention that generates a signal for the identification of the character and block location at which point Heit further states that such a signal may be generated by other known means. In other words Heit teaches that any known means may be used to identify the information and location of the block but also that the signal taught by his preferred embodiment may be generated by any known means. Therefore the combination of Heit and the above named references meet the prima facie requirement and applicants invention is obviated by the references as stated above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Dmitry Suhol
Primary Examiner
Art Unit 3725

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